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IN THE

Supreme Court of the United States

October Term, 1958

No. 773

In the Matters

—of—

RUBIN L. SIEGEL (also known as R. LAWRENCE SIEGEL) and HADASSAH R. SHAPIRO, attorneys,

Appellants,

—vs.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Appellee.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

WILLIAM G. MULLIGAN
Attorney for Appellants
36 West 44th Street
New York 36, N. Y.

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IN THE

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—of—

RUBIN L. SIEGEL (also known as R. LAWRENCE SIEGEL), an attorney,

Appellant,

—vs.—

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Appellee.

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—of—

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—vs.—

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Appellee.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

Appellants R. Lawrence Siegel and Hadassah R. Shapiro submit herewith this statement as to the jurisdiction of this Court to review on appeal orders of the Court of Appeals of the State of New York. The appeals involve identical questions which were presented in a single brief to the Court of Appeals of the State of New York and a single jurisdictional statement is filed, pursuant to Rule 15(3) of the Rules of this Court.

Opinions Below

No opinions were delivered in the courts below.

The order of the Court of Appeals of the State of New York from which appellant R. Lawrence Siegel appeals is officially reported at 5 N. Y. 2d 708. The order of the Court of Appeals of the State of New York from which appellant Hadassah R. Shapiro appeals is officially reported at 5 N. Y. 2d 707. The said orders were not unofficially reported.

The order of the Appellate Division of the Supreme Court of the State of New York, First Department in the *Matter of R. Lawrence Siegel* is officially reported at 6 A. D. 2d 866, case 2 and unofficially reported at 176 N. Y. S. 2d 928, case 5. The order of the Appellate Division of the Supreme Court of the State of New York, First Department in the *Matter of Hadassah R. Shapiro* is officially reported at 6 A. D. 2d 866, case 1 and unofficially reported at 176 N. Y. S. 2d 928, case 6.

Grounds of Jurisdiction

The nature of the proceedings and the statute pursuant to which they are brought are as follows:

1. These are appeals from orders of the Court of Appeals of the State of New York, denying motions for

leave to appeal to said Court of Appeals from orders of the Appellate Division of the Supreme Court, First Department, which disbarred appellants from practice as attorneys and counselors-at-law in the State of New York and struck the names of appellants from the roll of attorneys and counselors-at-law in the State of New York. Said proceedings in the courts below were brought pursuant to Section 90, subdivision 4 of the New York Judiciary Law.

2. The orders of the Court of Appeals of the State of New York were made and entered October 16, 1958. No orders were sought or made respecting a rehearing. Appellants' notices of appeal were filed in the Appellate Division of the Supreme Court of the State of New York, First Department, on January 13, 1959.

3. The statutory provision believed to confer on this Court jurisdiction of the appeals is 28 U. S. C. §1257(2). Appellants draw in question the validity of Section 90, subdivision 4 of the New York Judiciary Law on the ground that it is repugnant to the Constitution of the United States, and the decisions of the highest Court of New York State were in favor of its validity.

4. The cases believed to sustain the jurisdiction of this Court are *Ex parte Garland*, 4 Wall. 333, 378; *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117, 123; *Bradley* v. *Fisher*, 80 U. S. 335, 357; *Konigsberg* v. *State Bar of California*, 353 U. S. 252; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *Barsky* v. *Board of Regents*, 347 U. S. 442, 451; *Lambert* v. *California*, 355 U. S. 225.

5. The text of the statute involved is as follows:

"4. Any person being an attorney and counsellor-at-law, who shall be convicted of a felony shall, upon

such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

"Whenever any attorney and counsellor-at-law shall be convicted of a felony, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys."

Said statute is found at vol. 29, p. 108 of the New York Consolidated Laws (Judiciary Law) and is c. 649, §44 at p. 1380 of the Laws of New York 1945.

Question Presented by the Appeal

Does New York Judiciary Law Section 90, subdivision 4, as construed as requiring the disbarment without a hearing of attorneys who have been convicted in a United States District Court of the felony of perjury, deprive the attorneys of the right to follow their calling and deprive them of liberty and property without due process of law contrary to the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States of America?

Statement of the Case

Appellant Siegel was admitted to the Bar of the State of New York on October 31, 1934, appellant Miss Shapiro on December 15, 1948. Both engaged in practice until February 18, 1958 when each was sentenced by the United States District Court for the Southern District of New York as a result of their trial and conviction for the offenses of perjury and obstruction of justice. Appellant

Siegel was sentenced to one year and one day on each of seven counts and sentence was suspended; on each of four of the same seven counts he was fined five hundred dollars and the payment of the fines has been suspended pending appeal. Sentence was suspended upon each of five counts of the indictment on which appellant Miss Shapiro was found guilty.* The jury had acquitted both appellants upon three counts charging conspiracy to obstruct the due administration of justice, influencing a stenographer to destroy stenographic notes, and preparing certain substitute stenographic notes for submission to the grand jury (New York Court of Appeals Notice [Siegel] pp. 5, 6; [Shapiro] p. 6).

On May 8, 1958 The Association of the Bar of The City of New York served upon each appellant a petition to the Appellate Division of the New York Supreme Court, First Judicial Department, reciting the federal proceedings culminating in the sentence and submitting the matters to that court for determination as to whether the court should enter an order pursuant to subdivision 4 of Section 90 of the New York Judiciary Law, striking the name of each appellant from the roll of attorneys (Ibid.).

Each appellant submitted an answering affidavit and brief and requested the said court to conduct a hearing as to the nature of appellants' misconduct, if any, and as to their qualifications to remain members of the New York bar; it was the position of appellants in both the federal and state courts that the actions for which they had been indicted and tried were undertaken in good faith to protect

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* On February 17, 1959 the United States Court of Appeals for the Second Circuit unanimously affirmed the judgments against the appellants in the federal prosecutions (*United States* v. *Siegel and Shapiro* (Appendix hereto)). Petition to this Court for a writ of certiorari thereon will be filed March 19, 1959.

the interests of innocent clients. (Siegel affidavit to Appellate Division par. 5, Shapiro affidavit to Appellate Division par. 22.) Appellants claimed before the Appellate Division that automatic disbarment without hearing would deprive them of their property interests in the right to practice their profession, and deprive them of due process of law in violation of the state and federal constitutions; and as part of said application argued the unconstitutionality of the statute as construed to require automatic disbarment without any hearing. Appellants' request for oral argument at which the necessity for a hearing on the merits would have been demonstrated was not granted.

Without acting upon the application for leave to be heard, and without any hearing, the Appellate Division on July 3, 1958 made and entered orders striking the name of each appellant from the roll of attorneys.

Appellants then applied to the New York Court of Appeals for leave to appeal and as part of the said applications argued that their conduct as lawyers, and the relationship of that conduct to their right to practice, were matters on which no determination had been made by any court, *including the court which disbarred them;* their fitness to practice law was of course not in issue before the federal tribunal which heard the criminal charges against them (New York Court of Appeals Notice [Siegel] pp. 2, 32-34, [Shapiro] pp 2, 14).

In the New ourt of Appeals each appellant argued to that court York Court of Appeals Notices, p. 33):

> "Hence, if the Judiciary Law were to be construed so as to disbar the respondents, on the sole basis of the jury verdicts rendered against them, in the federal court, without providing them an opportunity to be

heard on the facts in their own defense, the statute would unconstitutionally operate to deprive the respondents of their rights without due process."

On October 16, 1958 the New York Court of Appeals denied the motions for leave to appeal without any opinion (5 N. Y. 2d 707, 708). Notices of appeal to this Court were thereupon filed in the Appellate Division as the "court possessed of the record" (Rule 10 [3] of the Rules of this Court).

The indictment of appellants contained twelve counts, all relating to informal memoranda or aide memoire of appellant Siegel's conversations during the year 1954 with one Harvey M. Matusow and the notes for these memoranda. At the times in question appellant Miss Shapiro was associated with appellant Siegel in the practice of law in appellant Siegel's offices in New York City (New York Court of Appeals Notice [Siegel] pp. 6-7).

Appellant Siegel had come into contact with Harvey M. Matusow some months before Matusow recanted, in January, 1955, his testimony as a Government witness in the trial of thirteen alleged Communists in the Southern District of New York in 1952. Mr. Siegel was counsel to The Nation and in that capacity had objected to the publication of an article entitled "The Informer" which tended to cast doubt on the veracity of certain Government witnesses. After "The Informer" had been printed* over his protest Mr. Siegel received a visit in April, 1954, from Matusow, who was sent to him by a staff member of The Nation. So far from being impressed by what Matusow told him, Mr. Siegel formed the impression that Matusow was irresponsible—a conclusion later reached by United States District Judge Edward J. Dimock who had con-

* As the cover article in the issue dated April 10, 1954.

ducted the new trial hearing in *United States* v. *Flynn*. (Siegel Affidavit, par. 26.)

In accordance with his established professional routine Mr. Siegel made or caused to be made private memoranda about his interviews with Matusow, which were six in number. Following Matusow's recantation in 1955 Mr. Siegel was summoned before the grand jury in the Southern District of New York and accurately recited the substance of his conversations with Matusow. Thereupon the Assistant U. S. Attorney asked Mr. Siegel to be a Government witness before Judge DIMOCK. (New York Court of Appeals Notice [Siegel] p. 7.) In preparing for the U. S. Attorney's use in questioning him before Judge DIMOCK (Siegel affidavit, par. 13) a chronological summary of his talks with Matusow, Mr. Siegel consulted his private memoranda or aide memoire. He found that there had been noted therein the names of three of Mr. Siegel's clients, upon whom Matusow had intruded in seeking audience with Mr. Siegel. Mr. Siegel and his office associate, Miss Shapiro, deleted references to these clients, who had no information about Matusow's recantation, and no possible interest therein. (New York Court of Appeals Notice [Siegel] pp. 6-8.)

Following receipt of the chronological summary from Mr. Siegel the Assistant U. S. Attorney decided against presenting this evidence to Judge DIMOCK. After further grand jury appearances of Mr. Siegel and Miss Shapiro, the Government charged them with testifying falsely that the aide memoire were as originally dictated when in fact (as Mr. Siegel admitted to the Government) they had been retyped as above stated. (Id. p. 8.)

Mr. Siegel and Miss Shapiro persistently declined to reveal the names of the clients deleted from the aide memoire until waivers of the attorney-client privilege

could be obtained. When obtained, the names of the three clients were disclosed. They were Miss Gloria Swanson, Colonel Lewis L. Bredin and Michael Shore. The grand jury interviewed these three clients and it was confirmed that they had unexpectedly encountered Matusow while seeing Mr. Siegel and that they had no information concerning Matusow or his recantation. (Id. p. 8.)

On the first occasion when Mr. Siegel identified memoranda to the grand jury as being the originals, Miss Shapiro, who had retyped some of them, was unavailable because of illness and without conferring with her he could not distinguish the originals from the retyped memos; he gave false or erroneous testimony about some of them. Following Miss Shapiro's return and his further appearance before the grand jury Mr. Siegel voluntarily sought to clarify with the U. S. Attorney his efforts and Miss Shapiro's* to protect his innocent clients from involvement in the notoriety of the Matusow public hearings before Judge Dimock. (Id. pp. 8-9.)

On March 21, 1955, Miss Shapiro testified for the first time and Mr. Siegel for the second time about the aide memoire he had produced; the same evening he telegraphed the U. S. Attorney and the following morning went to the latter's office to explain the situation. So far from being accorded the opportunity to return before the grand jury and clarify his testimony, Mr. Siegel found himself closeted with the Assistant United States Attorney and grilled on the basis that he "knew something" about Matusow's recantation which he had not told. Subsequent grand jury

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* After Mr. Siegel had testified that some of the aide memoire were what he had dictated at the time, Miss Shapiro had written up stenographic notes for some of the memos, conforming to the retyped version. She testified on March 21, 1955, that these were the original stenographic notes.

examinations of appellants were directed at nothing of that kind; indeed, two months before the indictment of appellants, Judge Dimock had made the finding that recantation had been Matusow's own unaided idea. (Siegel affidavit, pars. 17, 18, 20-26.)

The trial of the case consumed some five weeks. In the course of the trial both appellants took the witness stand and each was interrogated and cross-examined at very great length. The case was a closely contested one. The verdict was reached after eleven hours of deliberation; the jury deliberated nine hours on a Friday and reached its verdict on Saturday morning; the jurors had returned to the courtroom repeatedly for additional instructions, sought in vain to obtain a transcript of the judge's charge, and made requests, in some instances not granted, for additional instructions. The court's charge and the subsequent proceedings in connection therewith occupy 110 printed pages (New York Court of Appeals Notice [Siegel] p. 6).

With the benefit "of a very extensive and carefully prepared probation report," at the time of sentencing United States District Judge John F. X. McGohey stated with the agreement of the Assistant U. S. Attorney that the evidence "shows complete absence of any such intention on the part of either of these defendants to contribute in any way to whatever Matusow did in connection with his participation in the Flynn trial, and his recantation of his testimony." Judge McGohey further stated

> "that the testimony of the defendants with respect to what was in their minds when they did this has not been counteracted by any evidence offered by the Government and furthermore in so far as the record discloses there were no other persons present at any time at any of these meetings other than the Colonel Bredin and Miss Swanson and Shore." (Id. p. 9.)

The Substantiality of the Federal Question

Appellants proceed by appeal pursuant to 28 U. S. C. §1257(2) because they assert the repugnancy of a state statute to the Constitution. *Lambert* v. *California*, 355 U. S. 225.

This Court has repeatedly held that the right to practice law is a property right which cannot be denied without due process. *Konigsberg* v. *State Bar of California*, 353 U. S. 252; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232.

The cases are legion which hold that elementary to due process are notice, hearing and an opportunity to defend. This holding applies to those seeking to acquire the property right of admission to the bar. *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117, 123. *A fortiori* it is applicable to lawyers confronted with disbarment.

When a state may not deny admission to the bar unless it complies with due process, a legislative provision for the expulsion of lawyers from their profession must satisfy at least equivalent standards. *Ex parte Garland*, 4 Wall. 333. This Court there said (at 379):

> "The attorney and counsellor being, by the solemn judicial act of the Court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the Court, or *at the command of the legislature*. It is a right of which he can only be deprived by the judgment of the Court, for moral or professional delinquency." (Emphasis added.)

This Court further said in *Ex parte Garland* (at 378):

> "They [lawyers] hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded."

To the same effect is *Bradley* v. *Fisher*, 80 U.S. 335, 357.

Since a hearing below was denied to appellants at every level, this case squarely presents a question "readily distinguished" in *Barsky* v. *Board of Regents*, 347 U. S. 449, 452: the constitutionality of a statute which would require "the automatic termination of a professional license because of some criminal conviction of its holder." In *Barsky* this Court specifically noted the statute whose constitutionality is here in question. *Id.* at note 11.

That the question presented is so substantial as to require plenary consideration with briefs on the merits and oral argument for its resolution is apparent from examination of the other cases cited herein to sustain the jurisdiction. For, automatic disbarment upon conviction deprives a lawyer of the right to have all constitutionally relevant factors considered. Cf. *Barsky, supra,* at 451.

The mere opportunity to submit written statements, even in a proceeding for admission to the bar, does not satisfy due process. In *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117, where such opportunity was afforded and utilized, this Court declared (at 123) that:

> "We think that the petitioner having shown by his application that, being a citizen of the United States and a certified public accountant under the laws of a State, he was within the class of those entitled to be admitted to practice under the Board's rules, he should not have been rejected upon charges of his unfitness

> without giving him an opportunity by notice for hearing and answer. The rules adopted by the Board provide that 'the Board may in its discretion deny admission, suspend or disbar any person.' But this must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such notice, hearing and opportunity to answer for the applicant as would constitute due process. * * *
>
> "The petitioner as an applicant for admission to practice was, therefore, entitled to demand from the Board the right to be heard on the charges against him upon which the Board has denied him admission."

(Because Goldsmith had failed to demand a hearing, the decision below was nevertheless affirmed.)

It follows from what this Court said in *Goldsmith* that the New York Courts' reception of written statements only did not constitute the hearing on the charges against appellants which due process prescribes.

In the case at bar appellants were deprived summarily of the right to practice law, not because of any finding of unfitness, but because they had been convicted for acts which, were grounded in their overzealous concern with duty to their clients.

The record of the federal criminal trial, which was not before the state courts, would have shown that motivation had there been ruled irrelevant. By requiring disbarment without consideration in any tribunal of the motives actuating these lawyers or the question whether they were consistent with high standards of character and professional integrity, the State has adopted an inflexible procedure in its Judiciary Law which contrasts with that in its Education Law, of which this Court said in *Barsky* v. *Board of Regents*, 347 U. S. 442 at 452:

> "It accordingly has sought to attain its justifiable end by making the conviction of any crime a violation of its professional medical standards, and then leaving it to a qualified board of doctors to determine initially the measure of discipline to be applied to the offending practitioner.
>
> Section 6515 of the New York Education Law thus meets the charge of unreasonableness."

Appellants' endeavors to protect Miss Gloria Swanson, Colonel Bredin and Mr. Shore from unfair publicity proved fruitless. The three clients testified before the grand jury and also at appellants' trial, where they manifested their utter lack of any relevant information about Matusow and corroborated fully those portions of appellants' grand jury and petit jury testimony touching them.

The trial of appellants eventuating in their conviction was so restricted as not to permit them to show the true nature of their challenged acts and the circumstances of their occurrence. At a disciplinary hearing they might have established (as other convicted lawyers have succeeded in doing in the past) that they were innocent, and that they merited retention in their profession.

The United States Court of Appeals opinion affirming their convictions (see Appendix) centers on the issue of materiality and rests upon a new and novel extension of the federal criminal law which was never urged by the Government in this case and had never been advanced in any reported judicial definition of perjury.

Briefly, the United States Court of Appeals has now decided that the conceded immateriality of an answer actually given is unimportant if there is *any* answer to the question which *could have* been material—despite the provision of the perjury statute (18 U. S. C. §1621) that only he who

"states or subscribes any material matter which he does not believe to be true, is guilty of perjury . . . . " (Compare this Court's observation in *Sinclair* v. *United States*, 279 U. S. 263, that "the materiality of what is falsely sworn" is the "element in the crime of perjury" [at 298].)

If usurpation by a lawyer-witness of the tribunal's function to determine materiality has felony consequences (*i.e.*, is something more than a contempt) it might reasonably be found after a disciplinary hearing that such felony consequences were unforeseeable at the time. Under certain circumstances a lawyer may with propriety risk contempt for his client's welfare and "should refuse to disclose a privileged communication though the court send him to jail". (Decision No. 312, American Bar Association Ethics Committee, quoted in Drinker, Legal Ethics, p. 299.) If in so doing he commits acts which have never before been thought criminal, and a United States Court of Appeals later holds that such was their effect, a searching investigation is necessary before unprofessional conduct can be inferred from such finding of criminality.

The writer has found no decision of this Court passing upon the many state statutes which permit or require disbarment of a lawyer found guilty of a felony, automatically and without any hearing. The question whether such statutes deny due process is of national importance. In this country the legal profession symbolizes today the rule of law, which is at stake in many parts of the world; it is submitted that this Court should determine whether state legislatures may command violation of due process in the governance of the legal profession.

CONCLUSION

In view of the substantiality of the federal question, one, it is believed, which has never before been passed upon by this Court, the issues should be resolved upon plenary consideration. It is urged that probable jurisdiction be noted and the case set down for argument.

Respectfully submitted,

WILLIAM G. MULLIGAN,
Attorney for Appellants

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 109—October Term, 1958.

(Argued November 13, 1958 Decided February 17, 1959.)

Docket No. 25130

UNITED STATES OF AMERICA,

Appellee,

—v.—

R. LAWRENCE SIEGEL and HADASSAH R. SHAPIRO,

Appellants.

Before:

HAND, HINCKS and MOORE,

Circuit Judges.

Appeals from judgments entered upon the verdict of a jury in a prosecution for perjury (§1621, Title 18, U. S. Code), and for obstructing justice (§1503, Title 18, U. S. Code).

WILLIAM G. MULLIGAN, *for the Appellants.*

ARTHUR B. KRAMER, *for Appellee.*

HAND, *Circuit Judge*:

This is an appeal from judgments of conviction entered by Judge McGohey upon the verdict of a jury. The indict-

ment was in twelve counts, the 1st for a conspiracy to obstruct justice, the 2nd, 3rd, 4th, 5th and 6th for obstructing justice under §1503 of Title 18, U. S. C., and the 7th, 8th, 9th, 10th, 11th and 12th for perjury under §1621 of Title 18, U. S. C. The jury returned a verdict of guilty against the appellant Siegel on the 3rd, 4th and 5th counts for obstructing justice and upon four of the perjury counts, 7, 8, 9 and 10. It found a verdict against the appellant Shapiro on counts 3, 4 and 5 and on perjury counts 11 and 12. It acquitted both defendants upon the conspiracy count and on two of the obstruction counts, 2 and 6. The judge imposed upon the appellant Siegel a suspended sentence and put him on probation for a year and a day on each of the seven counts on which he was convicted, the sentences to run concurrently; in addition, he imposed a fine of $500 upon each of the four perjury counts. He suspended the imposition of sentence on the appellant Shapiro on all five of the counts on which she was convicted, and put her on probation for one year, the sentences to run concurrently. The appeal is based upon three main points: (1) that the prosecution did not establish that the testimony charged in the indictment was "material" to a proceeding pending at the time before the grand jury of the Southern District of New York; (2) that the defendants were not shown to have obstructed justice; and (3) that for seven separate reasons, stated in detail, the trial was unfair. The chief, and indeed the only important, question on this appeal is whether the testimony of the two appellants was "material" to an investigation pending before the grand jury for the Southern District of New York, instituted to examine two affidavits of one, Matusow, in which he recanted testimony that he had given on two trials in the Southern District of New York in July 1952 and in January 1954. The first of these was a prosecution against Elizabeth Gurley Flynn and others for violation of the

"Smith Act," and the second was a prosecution of one, Jencks, for filing a false affidavit. Matusow's testimony had been important in both these trials, but in January 1955 he submitted an affidavit in each case in support of an application for a new trial, in which he recanted his original testimony, adding in the *Flynn* case that one of the prosecutors had known that his testimony was false and had procured him to give it. In February 1955, the District Attorney for the Southern District of New York instituted an investigation before the grand jury, the object of which was to ascertain the truth of Matusow's recantation and of his charge against the prosecutor.

The grand jury subpoenaed Siegel, a lawyer, because it was known that Matusow had talked with him about his recantation; and the subpoena directed him to produce any documents relating to Matusow. Siegel appeared on March 3, 1955, and swore that beginning in April 1954 Matusow had had seven interviews with him, seeking his help in raising money to publish a book about his, Matusow's, career in the role of a "blacklister." Siegel testified that shortly after each interview he had dictated memoranda of the substance of the interview, which the grand jury directed him to produce. On March 17th, he reappeared and presented as the original memoranda documents, at least three of which were substitutes for the originals. Before this,—on March 7th—he had brought to the District Attorney in charge of the case a "chronological" memorandum which he said contained all the information contained in the original memoranda. The District Attorney read this, but, not being satisfied, asked for the originals and it was between the 7th and the 17th that Siegel prepared the substitute. The District Attorney, being still dissatisfied, asked for the stenographic notes from which the typed pages had been transcribed. On March 20th, at Siegel's direction his stenographer, Mary

Manna, changed the original stenographic notes in her books so that they should correspond with the changed memoranda put in evidence on the 17th. Some of her original pages were destroyed and some were interlined; and Siegel put these fabricated pages in evidence on March 21st. The other appellant, Shapiro, was also a member of the bar, and she was not only privy to, but actually participated in, all that Siegel did and she corroborated on the witness stand his testimony before the grand jury.

The prosecution relied especially upon the substituted memoranda—and supporting stenographic notes—purporting to state the contents of three of Siegel's seven interviews with Matusow: those of April 21, June 18 and November 3, 1954. Although the originals of these had been destroyed by the appellants, independent evidence showed that the substituted versions contained omissions. The first of these omitted to say that the interview had not ended at Siegel's office, but that Siegel and Matusow had gone together to "Blair House"--a New York restaurant—and thence to the apartment of an actress, named Swanson, where there was also present Bredin, a retired officer of the U. S. Army. The omission in the second memorandum was of a dinner, also at "Blair House," given by one, Shore, a manufacturer of "a mechanical parking device," who had made an assignment for the benefit of creditors and was "involved in a bankrupt proceeding." The omission in the third memorandum was of a statement to Siegel at his office in which Matusow had spoken of a telephone talk that he had had with Swanson while he was in Dallas, Texas. Bredin, Shore and Swanson were all clients of Siegel and his excuse for omitting all mention of their names was that he feared it would injure them in their business or personal affairs, if it should appear that they had been present at his interviews with Matusow, or that Matusow had talked with Swanson in Dallas.

As we have said, the appeals turn upon whether it was perjury and an obstruction of justice, to fabricate the false memoranda and swear that they were complete records of the interviews. That in turn depends upon whether that testimony was "material" to the investigation under way before the grand jury as to Matusow's recantation. Matusow was at the time of his interview with Siegel trying to get a publisher for his book, and it does not appear why he accompanied Siegel on the occasions when Siegel saw Swanson, Bredin and Shore, or why he reported to Siegel his telephone talk with Swanson in Dallas. Conceivably the omitted passages, if followed up, by cross-examination, might have led to relevant disclosures. However, we do not rest our affirmance of the convictions upon that possibility; on the contrary we will assume, *arguendo*, that the disclosure of the omitted passages would have contributed nothing to what the grand jury was seeking. The error of the appellants' position is that they confuse the "materiality" of the question with the "materiality" of the answer, as though it was proof that the question was immaterial, if the answer would have been so. It is, however, at once apparent that this substitutes the opinion of the witness for that of the tribunals as to the "materiality" of the answer. No matter how right the witness might be in believing that the answer would not contribute to the investigation, he was bound to leave that decision to the tribunal. A question is "material," no matter what the answer may be, unless it appears by its terms that the answer cannot be "material." In the case at bar it was enough to make Siegel's testimony "material" as to the originality of the memoranda that the interviews between him and Matusow might have thrown light upon his recantation. If Siegel was right in supposing that a truthful answer could not have assisted the grand jury, no doubt it would be reasonable to temper the severity of the sen-

tence, as Judge McGohey did in the case at bar. But the eventual impertinence of what was concealed could not excuse preventing by false testimony the grand jury from deciding that question. It is scarcely necessary to add that "materiality" is always a question for the court. *Sinclair* v. *United States*, 279 U. S. 263, 298; *Carroll* v. *United States*, 16 Fed. (2) 951 (C. A. 2); *United States* v. *Alu*, 246 Fed. (2) 29, 32 (C. A. 2).

The other points raised by the appellants are too trivial to require discussion. Nothing, for instance, could be more unwarranted than the charge that Judge McGohey was unfair or partial in his conduct of the trial. On the contrary he showed the utmost concern for the rights of the appellants whose strictures display an entire misapprehension of the essentials of a judge's duties.

We have discussed only the perjury counts; but what we have said is equally applicable to the attack upon the convictions under the "obstruction" counts. *Bosselman* v. *United States*, 239 Fed. Rep. 82 (C. A. 2); *United States* v. *Polakoff*, 121 Fed. (2) 333 (C. A. 2); *Broadbent* v. *United States*, 149 Fed. (2) 580 (C. A. 10); *Catrino* v. *United States*, 176 Fed. (2) 884 (C. A. 9).

Convictions affirmed.

Order of Court of Appeals in Siegel Matter

STATE OF NEW YORK
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the 16th day of October A. D. 1958.

PRESENT:

HON. ALBERT CONWAY,
Chief Judge, Presiding.

In the Matter

—of—

RUBIN L. SIEGEL (Also known as R. Lawrence Siegel),
An Attorney,

Appellant.

—v.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

GEARON KIMBALL
Deputy Clerk

(Seal)

Order of Court of Appeals in Shapiro Matter

STATE OF NEW YORK
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the 16th day of October A. D. 1958.

PRESENT:

HON. ALBERT CONWAY,
Chief Judge, Presiding.

In the Matter

—of—

HADASSAH R. SHAPIRO, An Attorney,
Appellant,

—v.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

GEARON KIMBALL
Deputy Clerk

(Seal)